

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

STEPHEN PULLENS,

Plaintiff,

vs.

AYAJ, et al.

Defendants.

8:21CV478

**MEMORANDUM
AND ORDER**

This matter is before the court on Plaintiff's motion to withdraw complaint (Filing 12). Plaintiff requests that he retain the right to refile at a later date and that his paperwork be kept on file or returned to him. Plaintiff also indicates he does not wish to pay the court's \$350 filing fee.

While Plaintiff has the right to dismiss this action voluntarily at this stage of the proceeding, and to do so without prejudice to refile at a later date, *see* Fed. R. Civ. P. 41(a), the dismissal will not relieve Plaintiff of the obligation to pay the court's \$350 filing fee. The Prison Litigation Reform Act (PLRA) "makes prisoners responsible for their filing fees the moment the prisoner brings a civil action or files an appeal." *In re Tyler*, 110 F.3d 528, 529-30 (8th Cir. 1997). Also, if the action is refiled at a later date, a new case file will be opened and another filing fee will be assessed. In other words, the present case will not be re-opened.

The court's local rules specify that original documents are discarded after the clerk scans them into the Electronic Case Files System. A party who wishes to have an original document returned after the clerk scans and uploads it to the System must, before submitting the document to the clerk, ask the assigned judge for written authorization for the document's return. NECivR 5.1(e)(2). Plaintiff did not request such authorization here. If Plaintiff requires copies of filed documents, he should contact the clerk's office to determine the proper method of requesting and paying for copies. *See* NECivR 79.1(b)(2) ("Fees to print a paper copy of an electronic filing

and to obtain a certified copy of an electronically filed document are allowed by 28 U.S.C. § 1914.”).

In summary, because Plaintiff’s request to withdraw his complaint is not made unconditionally, it will be denied. Plaintiff is not entitled to a fee waiver or to the return of his original documents, but he may voluntarily dismiss this action by filing a proper notice or motion under Rule 41(a).

Accordingly,

IT IS ORDERED that Plaintiff’s motion to withdraw complaint (Filing 12) is denied without prejudice.

Dated this 15th day of February 2022.

BY THE COURT:



Richard G. Kopf
Senior United States District Judge